

August 12, 2009

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **E0400867**

**WILLIAM E. HIX**  
Code Enforcement Appeal

Location: 29034–187th Avenue SE

Appellant: **William E. Hix**  
29034–187th Avenue SE  
Kent, Washington 98042

King County: Department of Development and Environmental Services (DDes)  
*represented by* **Mary Impson** and Al Tijerina  
900 Oakesdale Avenue SW  
Renton, Washington 98055  
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**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Deny appeal, with revised compliance schedule
Department's Final Recommendation:	Deny appeal, with revised compliance schedule
Examiner's Decision:	Deny appeal, with further revised compliance schedule

**EXAMINER PROCEEDINGS:**

Hearing opened:	July 9, 2009
Hearing continued:	July 9, 2009
Hearing closed:	July 30, 2009

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On July 31, 2008, the King County Department of Development and Environmental Services (DDES) issued a code enforcement Notice and Order to Appellant William Hix that found two violations of county code on a Rural Area-5 (RA-5) property located at 29034 187th Avenue SE, in the unincorporated Grass Lake area south of Covington and west of Black Diamond.<sup>1</sup> The Notice and Order cited Mr. Hix and the property with the following violations of county code:
  - A. Construction of an accessory structure (detached garage) without required permits, inspections and approvals; and
  - B. Construction/conversion of a carport into a detached garage without required permits, inspections and approvals.

The Notice and Order required correction of the violations by obtainment of Already Built Construction (ABC) permits or, alternatively, demolition and removal by October 6, 2008.

2. Mr. Hix filed an appeal of the Notice and Order, claiming that the structures have been onsite “for about 15 years,” and therefore should be considered to be “grandfathered.” The appeal did not contest the Notice and Order charge of lack of building permits. Mr. Hix desires that each of the structures be allowed to remain in its present condition.
3. A prehearing conference in this matter was conducted October 14, 2008, at which Mr. Hix did not appear. (Due notice was sent.) The case was set over for hearing, scheduled for December 2, 2008. However, in late November DDES requested that the matter be continued for good cause (pending probable voluntary compliance, then thought to be forthcoming).
4. The matter was later rescheduled for hearing to be convened July 9, 2009. The Appellant did not appear at the July 9, 2009 hearing, but the hearing was continued in any case for due process because of late distribution of the department report. The hearing continuance was to July 30, 2009, with notice, affording the Appellant another opportunity to appear. The Appellant did not appear at the July 30, 2009 hearing, which the Examiner conducted to completion in his absence.
5. When an appellant fails to appear to prosecute his or her appeal, as has occurred consistently in this case despite three opportunities to appear (one at the prehearing conference and two at hearing), the Hearing Examiner Rules of Procedure (ROP) authorize dismissal of the appeal for default by failure to appear. However, the authority to dismiss is discretionary. [ROP XI.F.3] In this case, rather than dismissal the Examiner sees greater value in adjudicating the straightforward issue on appeal and also in revising the compliance date rather than retaining the one in the issued Notice and Order (which is obviously long since past due, given the time taken up by the continuances and the appeal process).

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<sup>1</sup> The subject Notice and Order is termed by DDES as “supplemental”; a prior Notice and Order was issued under the same file number on June 12, 2006, addressing four violations of county code. The Notice and Order under consideration in this appeal case is solely the July 31, 2008 Notice and Order; the June 12, 2006 Notice and Order is not under Hearing Examiner jurisdiction in this proceeding.

6. The Appellant does not contest the finding of lack of permits in the Notice and Order, and it shall therefore remain undisturbed.
7. Mr. Hix's claim that the structures merit "grandfathered" status by virtue of their having been in place for approximately 15 years is unpersuasive of their having attained status as lawful non-conforming structures. (The term "grandfather" in the context of land use regulation is a commonly used colloquialism that is not established in Washington law as a legal term; the legal counterpart terms are nonconforming use and/or structure.)
8. DDES's unrefuted testimony is that since 1958, building permits have been required by King County for structures such as the two in question. The only evidence in the record of the buildings' longevity is the Appellant's appeal claim that they are approximately 15 years old; their evident age falls well short of predating 1958 and the initiation of building permit requirements. Under the law, there is no sunseting of the permit requirement due to time lapse since construction; the legal principle is that only if a structure predates the legal requirement of a permit does it not apply.
9. Accordingly, the preponderance of the evidence in the record is unpersuasive of the claim of "grandfathering" from permit requirements. The buildings are not lawful nonconforming structures with respect to their permit status. The Notice and Order's findings of violation, by their having been constructed and/or converted without the required building permits, inspections and approvals, are correct.

#### CONCLUSIONS:

1. The Notice and Order having been found correct in its findings of violations, it is sustained. The appeal is accordingly denied.
2. The compliance schedule, having been obviated by the time taken up by continuances and the appeal process, shall be revised accordingly. The time allowances in the Notice and Order appear to be reasonable and shall be generally utilized.

#### DECISION:

The Notice and Order is SUSTAINED and the appeal DENIED, provided that the compliance schedule is revised as stated in the following order.

#### ORDER:

1. *By no later than **September 11, 2009***, the Appellant and/or a due representative shall attend a preapplication meeting with DDES (which shall be scheduled for an appointment beforehand) for Already Built Construction (ABC) permits for the two structures in question.
2. *By no later than **October 16, 2009***, a **complete** ABC permit application(s) for the two structures shall be submitted to DDES. Thereafter, all pertinent timeframes and stated deadlines for supplementary submittals, response comments, etc., if any, shall be diligently observed by the Appellant through to permit issuance and final inspection.

3. If the Appellant decides not to pursue a permit for either or both of the structures, then all of the pertinent non-permitted structural work shall be demolished and the demolition debris removed from the property *by no later than **October 16, 2009***. (A demolition permit may be required; the Appellant shall consult with DDES regarding any such requirement. In addition, regulations may pertain to the destination and disposal of the demolition debris.)
4. In the event that the Appellant fails to submit a building permit application for either or both of the structures by the deadline stated above, the pertinent non-permitted structural work shall be demolished and the demolition debris removed as above *by no later than **October 16, 2009***.
5. In the event that either or both of the requested building permits is pursued and is ultimately denied, the pertinent, non-permitted structural work shall be demolished and the demolition debris removed as above *by no later than **60 days after such denial***.
6. DDES is authorized to grant deadline extensions for any of the above requirements if warranted, in DDES's sole judgment, by circumstances beyond the Appellant's diligent effort and control. DDES is also authorized to grant extensions for seasonal reasons (potential for erosion, other environmental damage considerations, etc.).
7. No fines or penalties shall be assessed by DDES against Mr. Hix and/or the property if the above compliance requirements and deadlines are complied with (noting the possibility of deadline extension pursuant to the above allowances). However, if the above compliance requirements and deadlines are not complied with in full, DDES may impose penalties as authorized by county code retroactive to the date of this decision.

ORDERED August 12, 2009.

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Peter T. Donahue  
King County Hearing Examiner

### NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding Code Enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JULY 30, 2009, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0400867/WILLIAM E. HIX.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was Al Tijerina representing the Department.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services (DDES) staff report to the Hearing Examiner for E0400867/William E. Hix
- Exhibit No. 2 Copy of the Notice & Order issued July 31, 2008
- Exhibit No. 3 Copy of the Notice and Statement of Appeal received August 8, 2008
- Exhibit No. 4 Copies of codes cited in the Notice & Order
- Exhibit No. 5 Printout of DDES case log entries for E0400867/William E. Hix from September 30, 2004 through June 18, 2009
- Exhibit No. 6 Aerial photographs of subject property taken in 2007, 2005, 2002, 2000, 1998 and 1996 (pgs. 1-6); photographs of subject property from assessor records (pgs. 7, 9, 12); photographs of subject property taken by Code Enforcement Officer Jim Toole on 2/28/05 (pgs. 11-12); floor plan of mobile home obtained from assessor records (pg. 8) and photographs of subject property taken by Code Enforcement Officer Mary Impson on July 1, 2009 (pg. 10).
- Exhibit No. 7 Assessor records for subject parcel ranging from 1983 through 2009
- Exhibit No. 8 Copy of 1984 mobile home permit

PTD:vsm  
E0400867 RPT